

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	No. 3:08-CR-30
V.)	(Varlan/Guyton)
)	
ALFREDO ALCARAZ-BARBA,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

All pretrial motions in this case have been referred to the undersigned pursuant to 28 U.S.C. § 636(b) for disposition or report and recommendation regarding disposition by the District Court as may be appropriate. This case is before the Court upon Defendant Alfredo Alcaraz-Barba's Motion For Subpoena. [Doc. 22]. The government has filed a Response in opposition. [Doc. 28].

The defendant asserts that a Rule 17 subpoena is needed for him to obtain records from the Texas Department of Criminal Justice regarding his alleged attempt, in 1999, to appeal a deportation order to the Board of Immigration Appeals. The defendant claims that the jail caused his appeal to arrive one day late, and on that basis alone his appeal was denied, and he was deported. He seeks to attack that appeal denial, to the end of proving that the predicate deportation for the charge in the present case is of no effect.

The government opposes, arguing that no such collateral attack is proper for use as a defense in this case. Moreover, the government says the defendant has been deported several times, and he has never denied that he was in the country illegally.

The Court finds, without reaching any of the merits of the issue, that the subpoena should issue, and therefore, the Motion [Doc. 22] is **GRANTED**. The Clerk of the Court is directed to issue the subpoena in the form of the Exhibit to the Motion. [Doc. 22-2].

IT IS SO ORDERED.

ENTER:

s/ H. Bruce Guyton
United States Magistrate Judge